vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7345 OF 2006

Suprendra Madanlalji Chandak
Digvijay Textile (P) Ltd. ... Petitioner

V/s.

Tukaram Ganpati Sadale ... Respondent

Mr.M.S. Topkar for Petitioner
Mr.Abhay Nevagi with Yogesh Paranjape for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 31, 2007**

P.C.:

. The petitioner has challenged the award of the Labour Court dated 28.3.2006 in Reference (IDA) No.119 of 1999. The Labour Court has held that the petitioner had wrongly terminated the services of the respondent workman w.e.f. 31.3.1998. Consequently, the Labour Court granted reinstatement with continuity of service and 50% of the backwages. The Labour Court came to the conclusion that the petitioner had not issued any show-cause notice or chargesheet or conducted an enquiry against the respondent although it was the petitioner's case that the respondent had remained absent and that he was employed with another establishment. The Labour Court observed that no evidence was placed on record by the Petitioner to prove that the respondent was employed with M/s.Sony Textiles, Ichalkaranji, as alleged by

them. However, while passing the award, the Labour Court lost sight of the fact that the respondent workman had in fact crossed the age of superannuation. In the affidavit filed by the workman in lieu of examination in chief before the Labour Court on 18.10.2004, the workman had stated that his age was 63 years. The Labour Court thus could not have granted reinstatement when the award was passed in 2006. The Labour Court ought to have granted reinstatement only upto the date of retirement i.e., when the respondent workman attained the age of 60 years on 2.4.2002.

2. The award of the Labour Court will thus have to modified as follows:

> The Respondent workman is entitled to reinstatement with the petitioner with continuity of service and 50% of backwages till he attains the age of 60 years i.e., upto 2.4.2002.

3. With this modification in the award of the Labour Court, petition is disposed of.